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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Tony Ray Almendarez,
10 Plaintiff,

No. CV 13-1995-PHX-RCB (SPL)

11 vs.

ORDER

12 John Imdorf, et al.,
13 Defendants.
14

15 On August 5, 2013, Plaintiff Tony Ray Almendarez, who is confined in the
16 Maricopa County Fourth Avenue Jail, filed a Complaint in Maricopa County Superior
17 Court, Matter No. CV 2013-010195. In his Complaint, Plaintiff asserted claims of
18 unlawful arrest, malicious prosecution, defamation, illegal search and seizure and due
19 process violations. (Doc. 1, Ex. A.) Plaintiff named two individuals in his Complaint:
20 Phoenix Police Officer John Imdorf and Phoenix Police Detective James Ferree. On
21 October 2, 2013, Defendants Imdorf and Ferree removed the case to federal court based
22 on federal question subject matter jurisdiction, stating that Defendant Imdorf first
23 received a copy of the Complaint on September 11, 2013. On October 9, 2013,
24 Defendants filed a Motion to Dismiss for Failure to State a Claim (Doc. 3). On October
25 28, 2013, Plaintiff filed a Motion for Leave to File an Amended Complaint (Doc. 4)
26 along with a lodged proposed Amended Complaint (lodged at Doc. 5). On November 14,
27 2013, Defendants filed a Response to Plaintiff's Motion for Leave to File an Amended
28 Complaint and a Motion for a Stay or in the Alternative, Motion for Screening (Doc. 6).

1 The Complaint facially supports that subject matter jurisdiction is proper in federal
 2 court and that the case was timely removed. 28 U.S.C. 1446(b). Plaintiff's Motion will
 3 be granted insofar as the Amended Complaint supersedes the original Complaint in its
 4 entirety. The Court will Order the filing of the lodged Amended Complaint as Plaintiff's
 5 "First Amended Complaint" and will dismiss the First Amended Complaint with leave to
 6 amend using the court-approved form complaint in compliance with the Instructions and
 7 Rule 8 of the Federal Rules of Civil Procedure. The Court will deny Defendants'
 8 motions as moot.¹

9 **I. Removal to Federal Court Was Proper**

10 A defendant may remove any civil action brought in state court over which the
 11 federal court would have original jurisdiction. 28 U.S.C. § 1441(a). That is, a civil
 12 action that could have originally been brought in federal court may be removed from state
 13 to federal court. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). A federal court
 14 has original jurisdiction "of all civil actions arising under the Constitution, laws, or
 15 treaties of the United States." 28 U.S.C. § 1331.

16 The Complaint in this case facially supports that subject matter jurisdiction exists
 17 in federal court because Plaintiff alleges violations of his federal constitutional rights. 28
 18 U.S.C. § 1441. Further, the case was timely removed. 28 U.S.C. § 1446(b) (requiring
 19 that a case be removed within 30 days after receipt by the defendant). Plaintiff has not
 20 objected to removal. Accordingly, the case was properly removed.

21 **II. Statutory Screening**

22 The Court is required to screen complaints brought by prisoners seeking relief
 23 against a governmental entity or an officer or an employee of a governmental entity. 28
 24 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff

25
 26 ¹ Because the Prison Litigation Reform Act (PLRA) requires the Court to screen
 27 and dismiss a prisoner complaint that fails to state a claim, Defendants' motions will be
 28 denied as moot. Because Plaintiff may be able to amend his Complaint to state a federal
 claim, Plaintiff will be afforded an opportunity to amend. *See Lopez v. Smith*, 203 F.3d
 1122, 1127-29 (9th Cir. 2000) (en banc).

1 has raised claims that are legally frivolous or malicious, that fail to state a claim upon
 2 which relief may be granted, or that seek monetary relief from a defendant who is
 3 immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

4 Rule 8(a) of the Federal Rules of Civil Procedure requires a “short and plain
 5 statement of the claim.” Fed. R. Civ. P. 8(a)(2). Rule 8(d)(1) states that “[e]ach
 6 allegation must be simple, concise, and direct.” A complaint having the factual elements
 7 of a cause of action scattered throughout the complaint and not organized into a “short
 8 and plain statement of the claim” may be dismissed for failure to satisfy Rule 8(a). *See*
 9 *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988); *see also McHenry v.*
 10 *Renne*, 84 F.3d 1172 (9th Cir. 1996). It is not the responsibility of the Court to review a
 11 rambling narrative in an attempt to determine the number and nature of a plaintiff’s
 12 claims.

13 **III. Failure to Comply with Rule 8 of the Federal Rules of Civil Procedure**

14 The Court has reviewed Plaintiff’s First Amended Complaint and concludes that it
 15 fails to comply with Rule 8 of the Federal Rules of Civil Procedure. Plaintiff’s First
 16 Amended Complaint contains seven single-spaced pages of “Facts” followed by three
 17 single-spaced pages of “Legal Claims.” Further, each separately numbered paragraph
 18 under “Legal Claims” appears to contain multiple claims and it is not clear which facts
 19 apply to each claim. Thus, the Court cannot meaningfully review the First Amended
 20 Complaint, as required by 28 U.S.C. § 1915A(a).

21 **IV. Leave to Amend**

22 For the foregoing reasons, Plaintiff’s First Amended Complaint will be dismissed
 23 for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. Within 30
 24 days, Plaintiff may submit a second amended complaint to cure the deficiencies outlined
 25 above. The Clerk of Court will mail Plaintiff a court-approved form to use for filing a
 26 second amended complaint. If Plaintiff fails to use the court-approved form, the Court
 27 may strike the second amended complaint and dismiss this action without further notice
 28 to Plaintiff.

1 Plaintiff must clearly designate on the face of the document that it is the “Second
2 Amended Complaint.” The second amended complaint must be retyped or rewritten in
3 its entirety on the court-approved form and may not incorporate any part of the original
4 Complaint or First Amended Complaint by reference. Plaintiff may include only one
5 claim per count.

6 A second amended complaint supersedes the original Complaint and First
7 Amended Complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal*
8 *Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After
9 amendment, the Court will treat the original Complaint and First Amended Complaint as
10 nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised in the
11 original complaint or first amended complaint and that was voluntarily dismissed or was
12 dismissed without prejudice is waived if it is not alleged in a second amended complaint.
13 *Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

14 **V. Warnings**

15 **A. Address Changes**

16 Plaintiff must file and serve a notice of a change of address in accordance with
17 Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion
18 for other relief with a notice of change of address. Failure to comply may result in
19 dismissal of this action.

20 **B. Copies**

21 Plaintiff must submit an additional copy of every filing for use by the Court. *See*
22 LRCiv 5.4. Failure to comply may result in the filing being stricken without further
23 notice to Plaintiff.

24 **C. Possible Dismissal**

25 If Plaintiff fails to timely comply with every provision of this Order, including
26 these warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963
27 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any
28 order of the Court).

1 **IT IS ORDERED:**

2 (1) Plaintiff's Motion for Leave to File an Amended Complaint (Doc. 4) is
3 **granted** insofar as the Amended Complaint supersedes the original Complaint in its
4 entirety and the Clerk of Court **must file** the lodged Amended Complaint (lodged at Doc.
5 5) as Plaintiff's First Amended Complaint.


6 (2) The First Amended Complaint (lodged at Doc. 5) is **dismissed** for failure to
7 comply with Rule 8 of the Federal Rules of Civil Procedure. Plaintiff has 30 days from
8 the date this Order is filed to file a second amended complaint in compliance with this
9 Order.

10 (3) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
11 Court must, without further notice, enter a judgment of dismissal of this action without
12 prejudice.

13 (4) Defendants' Motion to Dismiss for Failure to State a Claim (Doc. 3) and
14 Motion for a Stay or in the Alternative, Motion for Screening (Doc. 6) are **denied** as
15 moot.

16 (5) The Clerk of Court must mail Plaintiff a court-approved form for filing a
17 civil rights complaint by a prisoner.

18 DATED this 4th day of December, 2013.

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22 Robert C. Broomfield
23 Senior United States District Judge
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**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing Fee. The filing fee for this action is \$350.00. If you are unable to immediately pay the filing fee, you may request leave to proceed *in forma pauperis*. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$350 filing fee or the application to proceed *in forma pauperis* to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed *in forma pauperis*). Each original document (except the initial complaint and application to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. See Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “Bivens v. Six Unknown Federal Narcotics Agents” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. **Counts.** You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. **Issue Involved.** Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.
3. **Supporting Facts.** After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. **Injury.** State precisely how you were injured by the alleged violation of your rights.
5. **Administrative Remedies.** You must exhaust any available administrative remedies before you file a civil rights complaint. See 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

B. DEFENDANTS

1. Name of first Defendant: _____. The first Defendant is employed as:
 _____ at _____.
 (Position and Title) (Institution)
2. Name of second Defendant: _____. The second Defendant is employed as:
 _____ at _____.
 (Position and Title) (Institution)
3. Name of third Defendant: _____. The third Defendant is employed as:
 _____ at _____.
 (Position and Title) (Institution)
4. Name of fourth Defendant: _____. The fourth Defendant is employed as:
 _____ at _____.
 (Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

COUNT II

1. State the constitutional or other federal civil right that was violated: _____

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

☐ Basic necessities ☐ Mail ☐ Access to the court ☐ Medical care

☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation

☐ Excessive force by an officer ☐ Threat to safety ☐ Other:

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

[illegible]

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## 5. Administrative Remedies.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No

- b. Did you submit a request for administrative relief on Count II? ☐ Yes ☐ No

- c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☐ No

- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT III

1. State the constitutional or other federal civil right that was violated: _____.
2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
☐ Basic necessities ☐ Mail ☐ Access to the court ☐ Medical care
☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation
☐ Excessive force by an officer ☐ Threat to safety ☐ Other: _____.
3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.
4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

_____.
5. **Administrative Remedies.**
 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
 - b. Did you submit a request for administrative relief on Count III? ☐ Yes ☐ No
 - c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☐ No
 - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____.

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.